OWCP Annual Report to Congress FY 1996

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U.S. Department of Labor
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ASSISTANT SECRETARY'S MESSAGE

I am very pleased to forward the Office of Workers' Compensation Programs' Annual Report for Fiscal Year (FY) 1996 to the Secretary, to be transmitted to the Congress.

In FY 1996, OWCP leadership has taken wise advantage of the opportunities provided by union/management partnership and by the Congressional call for strategic planning to address the significant elements of its missions in the three Federal work injury programs. It has taken steps to improve customer service and communications, manage benefit costs, and provide injured workers with good medical care, promptly paid benefits, and the opportunity to return to work safely. Savings from the review of FECA long-term disability continue to accrue, and the proportion of injury cases resolved within the first year continued to rise.

As the often startling headlines remind us that our health and good fortune are enjoyed from day to day and not guaranteed, OWCP continues to assure that Federal civilian employees, longshore workers, coal miners and their dependents receive prompt and fair decisions when they suffer disability or disease.

The Employment Standards Administration is committed to serving employers and workers in continuing to responsibly and humanely manage these important programs for the benefit of the public.

Bernard E. Anderson
Assistant Secretary for
Employment Standards

DIRECTOR'S MESSAGE

In passing the Government Performance and Results Act (GPRA), Congress challenged all Federal agencies to match themselves against private industry in key areas - customer service and satisfaction, leanness of operation, and, where they are comparable, industry performance benchmarks.

OWCP programs are already in the forefront of the workers' compensation industry in many respects. The FEC program has an enviable record of low administrative cost and low friction cost, and has arrested the chronic trend of increasing benefit costs. Since FY 1993, when FEC introduced early intervention and the impact of the Periodic Roll Management project began in earnest, costs have declined each year when adjusted for inflation In FY 1996, FECA benefits increased by only one percent; in constant dollar terms, this is 1.7 percent lower than FY 1995. The long-term disability roll, which had been increasing by three to four percent a year, declined by two percent. Medical and benefit payment timeliness and employee returns to work (up 31 percent) are at all-time highs, reflecting a marked improvement in the program's delivery of services to injured workers.

The Longshore program has continuously improved the accuracy and fairness of its assessment process through higher quality auditing of employer and insurer reports. The Black Lung program is shedding procedural steps with the help of a union/management partnership reinvention team, to match its streamlined staff and declining beneficiary rolls. Both programs provided a high level of customer service despite declining staff and despite the disruption of more than half of their employees being furloughed during the general government shutdown.

OWCP's swift response to tragic accidents in Federal workplaces and our continuing support for the victims of terrorism in Oklahoma City, have underscored what a valuable instrument the Federal workers' compensation laws, and the laws in the states, provide for resolving work injury claims.

Our Strategic Plan for FY 1998 - 2002 builds on these achievements and sets a clear path toward improving service, administrative efficiency, and benefit cost control. Our primary goal for the FEC program is "returning injured workers to work at the earliest medically appropriate time," because suitable employment is the best outcome for workers and employers alike. We're devising a way to measure the total lost days of production from work injury, a meaningful goal which isn't captured by counting processing days. It isn't a common industry benchmark, but it should be, since it is disability days that impact both on employers' costs and productivity and on injured workers' lives. And since the FECA, unlike most state workers' compensation laws, does not permit "settling" claims, the measurement of lost days in this program will provide a uniquely accurate picture of the true human cost of workplace injuries.

Other goals are to provide better and prompter information to customers, reduce the friction cost of appeals in Black Lung and Longshore through administrative dispute resolution, and use new technology to improve the accuracy of medical payments and to reduce form-filing and paper handling in all three programs. We are also applying the principles of the GPRA internally, through the development and implementation of specific performance agreements at all managerial levels, as well as to our interactions with our Federal employing agency and Federal employee union partners. A major emphasis during 1996 was to convert our "technical assistance" programs, which had tended to be reactive to outside requests for training, into strategic efforts to produce targeted, measurable improvements in our partners' contributions to the processing of workers' compensation cases. In so doing, not only the specific measures but our overall relationships with our external partners have significantly improved.

Finally, we continue to pursue internal employee involvement, labor/management partnership, and work process reengineering as integral parts of our overall Strategic Plan for OWCP. Through progress on all these fronts, OWCP is making an increasingly positive impact in the lives of its customers.

Shelby Hallmark
Acting Director, Office of
Workers' Compensation Programs

OFFICE OF WORKERS' COMPENSATION PROGRAMS

Accomplishments In FY 1996

Strategic Plan Goals

. **Return Injured FECA Workers to Work**

Nurse intervention resulted in more than 4,600 early returns to work through nurses. The vocational rehabilitation program returned 842 longer-term disabled workers to work. This amounted to a 3 1 percent increase in total rehabilitations over the previous year and far exceeded our goal.

OWCP completed the first phase of a study to establish a baseline for length of disability of FECA injured workers, using cases filed and receiving disability payments in FY 1994, and established a goal for reducing disability in FECA Quality Case Management cases in FY 1997.

. **Serve Customers More Promptly and Efficiently**

The average number of days from receipt of a Black Lung claim to issuance of the first merit decision was reduced by 13 days, from 138 days in FY 1995 to 125 days in FY 1996.

By eliminating requirements to obtain medical documentation in every case, Longshore's streamlined procedures reduced paperwork and costs to insurance carriers and self-employers.

FEC changed its procedures for handling its simpler occupational disease cases and rendered decisions on 82 percent of these cases within 90 days, exceeding our goal of 75 percent. The number of undecided occupational disease cases outstanding dropped by 28 percent.

. **Increase Program Integrity in All Three Programs**

Periodic Roll Management (PRM) teams in New York, Cleveland, Denver, Dallas and the National Operations Office saved over $11 million from case reviews in the fiscal year.

Four previously established PRM teams accomplished savings of $1.1 million in the fiscal year before a Reduction in Force required their termination in January of 1996. Total 1996 savings from all teams exceeded the goal for the year by over six million dollars, and total accrued savings from the project reached $179.8 million.

FEC and Black Lung completed comprehensive reviews of their implementing regulations. Black Lung's rulemaking proposal was transmitted to the Office of Management and Budget on September 30.

FECA Cost Oversight

- FECA benefit outlays totaled $1.9 billion in Fiscal 1996, 1.7 percent lower than last year when adjusted for inflation, the third consecutive year that outlays have decreased in constant dollars.

- Medical payments for physician services were reduced by over $80 million under the revised FECA medical fee schedule.

Reinvention/Reengineering

- The Black Lung Greensburg District Office won the National Partnership Award from Vice President Gore, one of the first such awards made by the National Partnership Council honoring labor-management teams which improve customer service or save tax dollars through innovation.

- The FECA Oklahoma City Emergency Response Team (Dallas Region) won the Vice President's "Hammer" award for quick and efficient response to the needs of the Oklahoma City bombing victims, their families, and their employing agencies.

Program Modernization

- OWCP tested Interactive Voice Response software to provide claim and bill information to claimants and medical providers, and acquired imaging equipment to begin a "paperless" pilot for handling appeals board cases.

- Employee workstations in FEC and Longshore were upgraded to Windows 95™ software. A searchable World Wide Web home page was established on the Internet, including information on how to reach district offices, and the texts of basic FECA publications.

- The Longshore program began installation of new interactive database software.

FEDERAL EMPLOYEES' COMPENSATION ACT

Introduction

The first comprehensive law protecting Federal workers from the effects of work injuries was signed by President Wilson in 1916. Since that time, the Federal Employees' Compensation (FEC) program has constantly changed to meet its commitment to provide good service for employees and their employing agencies, and to minimize the human, social and financial costs of work-related injuries.

During FY 1996, the program provided workers' compensation coverage for approximately three million Federal workers. Coverage is also extended by special legislation to Peace Corps and VISTA volunteers, Federal petit and grand jurors, volunteer members of the Civil Air Patrol, Reserve Officer Training Corps Cadets, Job Corps, Youth Conservation Corps enrollees, and non-Federal law enforcement officers when injured under certain circumstances involving crimes against the United States.

Benefits and Services

The FEC program is committed to assisting Federal employees who sustain work-related injury or disease with adequate and timely financial assistance and help in returning to work. Coverage under the Act includes alI medical treatment for work-related injury or disease. During the first 45 calendar days of disability from traumatic injury, the law provides for continuation of regular pay from the employer. If disability continues after that, and in all occupational disease disability cases, the program makes payments to replace lost income.

Compensation for wage loss is paid at two-thirds of the employee's salary if there are no dependents, or three-fourths if there is at least one dependent. Other benefits include schedule awards, which are payments for the permanent loss, or loss of use, of a part of the body, such as an arm or leg, and benefits to survivors in the event of work-related death. A loss of wage-earning capacity benefit is paid to a permanently injured worker who can return to work only at a lower wage because of work-related disability. Physical and vocational rehabilitation services are provided under the law, and injured workers are required to participate in vocational rehabilitation when so directed. These benefits are paid directly by the FEC program to injured employees, their dependents, and service providers.

During FY 1996, 175,052 new cases were created and the FEC program provided approximately $1.9 billion in benefits for work-related injury or illness to almost 270,000 Federal workers. Wage loss compensation accounted for $1.3 billion of these benefit payments, medical and rehabilitation services were $477 million, and payments to surviving dependents for death benefits totaled $121 million.

The Federal Employees' Compensation Act (FECA) is the exclusive remedy by which Federal employees may obtain disability, medical, and/or survivor benefits from the United States for workplace injuries. Therefore, the program must protect claimants' rights to due process in the event of an adverse decision. A formal decision, including a description of the employee's appeal rights, is issued any time an adverse decision involving

entitlement is reached. There are three forms of appeal: Within 30 days of a formal decision, a claimant who has not requested reconsideration may request either an oral hearing before an office representative or a review of the written record (but not both). After the hearing is held or review of the written record is completed, the Office of Workers' Compensation Programs (OWCP) will issue a formal decision, including notice of further appeal rights. In FY 1996, 7,991 requests for hearing were received with 6,885 total dispositions. Within one year of a formal decision, a claimant may ask OWCP to reconsider the decision. The request must contain relevant evidence not previously submitted or arguments for error in fact or law in reaching the contested decision. To obtain reconsideration after the one year period has expired, the claimant must demonstrate by clear evidence that OWCP's decision was erroneous. Finally, within one year of a formal decision, a claimant may request review by the Employees' Compensation Appeals Board (ECAB), which is the highest authority in Federal workers' compensation claims. The ECAB is an independent entity outside OWCP's jurisdiction. ECAB review is based solely on the case record at the time of the formal decision and new evidence is not considered.

Funding

Benefit payments under FECA are made from the Employees' Compensation Fund. In turn, most Fund outlays are billed to the employing agencies each year through a mechanism known as chargeback. Chargeback costs have remained stable when adjusted for wage and cost-of-living increases in the last three years, with increases in total costs of 3.2 percent in chargeback year 1994, 1.2 percent in 1995, and only 0.3 percent during the past year (chargeback year 1996, July 1, 1995, through June 30, 1996).

Most agencies, except U.S. Postal Service and some non-appropriated fund agencies, include workers' compensation costs in their next annual appropriation requests to Congress, and remittances are not made until the first month of the subsequent fiscal year -- 15 months after the period billed. This lag usually means that remittances are insufficient to cover current outlays, due to cost-of-living increases in wage loss benefits and medical cost inflation. The annual Department of Labor (DOL) appropriation makes up the difference.

Expenses for a small number of cases are not charged back to agencies but are covered by the DOL appropriation. For FY 1996, these non-chargeback expenses amounted to approximately $45 million. Most of these costs are for injuries that occurred before December 1, 1960, when the chargeback system went into effect.

The costs of administering the FEC program, also covered from funds appropriated to DOL, totaled $75.3 million for FY 1996. These expenditures included $65.1 million in direct costs to OWCP and approximately $10.2 million for legal, investigative, and other support from ECAB, Office of the Solicitor, and the Office of the Inspector General.

Case Adjudication and Management

Timely Decision-Making

The FEC program's first tier processing timeliness goal for deciding occupational disease cases had been 70 percent within 180 days. Customer surveys revealed that claimants filing this type of case were not satisfied with this time frame, and the program determined that many occupational disease cases could in fact be handled much more rapidly. Accordingly, in FY 1995, FEC revised its procedures to distinguish between "basic" occupational disease claims and ''extended" claims so that simpler cases would be resolved more quickly, allowing payment and return-to-work efforts to begin.

"Basic" cases are those which can usually be adjudicated based on medical and factual information that is provided at the outset, such as simple exposure cases. In FY 1996, 82 percent of "basic" cases were adjudicated within 90 days, and 98 percent within 180 days. Of the more complicated, "extended" cases, 69 percent were adjudicated within 180 days. As a result of the streamlining of occupational disease case processing, the number of cases awaiting adjudication was reduced by 28 percent.

Quality Case Management

Quality Case Management (QCM), a new approach to case management designed to reduce the number of days lost from work due to disability, began in Division of Federal Employees' Compensation (DFEC) district offices in FY 1993. Under QCM, every injury case for which a wage loss claim is filed and no return to work is specified is reviewed for assignment to an early intervention nurse. The nurse visits the claimant and coordinates medical care and light duty, working with the attending physician, employing agency, and claimant. Expedited vocational rehabilitation services and/or second opinion evaluations is provided for claimants not re-employed after 120 days of the nurse's services.

Results. Quality Case Management again made huge strides in FY 1996 with prompt interventions occurring in 97 percent of the approximately 10,500 QCM cases that were created during the year. Over 9,700 cases were referred to nurses under QCM procedures. Nearly 3,400 workers were referred for expert second opinion evaluations, and 1,079 were referred for vocational rehabilitation services. Nearly 5,500 individuals returned to work in FY 1996 with the assistance of contract nurses or rehabilitation counselors. Of QCM cases with outcomes in FY 1996, 73 percent were resolved within one year of the date disability began and 81 percent were resolved within two years. All of these outcomes represented substantial improvements over FY 1995 results. An early review of QCM cases with injury dates in 1994 revealed a four percent reduction in injured workers' average time of absence from work.

Increased returns-to-work resulting from QCM have reduced the number of cases receiving long-term disability benefits. QCM is expected to continue to reduce the number of cases entering and the average amount of time cases remain on the compensation rolls. This in turn will lead to a reduction in overall costs for FECA compensation and medical treatment.

District Office Review. The QCM procedures have been in effect since FY 1993. In FY 1996, OWCP undertook a comprehensive on-site review of QCM cases in all 12 district offices to assess how well QCM is working and to identify any problems. The study confirmed the overall effectiveness of the QCM approach to early disability case management, and identified areas where improved coordination between claims and vocational rehabilitation staff can further enhance results.

Periodic Roll Management Project

The Periodic Roll Management (PRM) project has been enormously successful and continues to far exceed OWCP's original estimates. Since 1992, PRM project staff, working in teams, have been screening long-term disability cases to provide needed medical examinations, vocational rehabilitation and placement assistance, and to ultimately re-employ the worker. Where disability has lessened, benefits are adjusted accordingly and unnecessary compensation costs are reduced.

The PRM teams established last year in New York, Cleveland, Denver, Dallas, and the National Operations office saved over $11 million from case actions accomplished in FY 1996. An additional $13.7 million accrued from the cases acted on by the team in FY 1995, for a total of $24.8 million. Meanwhile, savings accrued in the amount of $39.4 million from actions completed by the disbanded FY 1992 teams in the four original offices. By the end of FY 1996, PRM case actions had saved $180 million in compensation benefits.

In FY 1996, nearly 7,000 cases were screened and benefits were adjusted or terminated in 1,900 cases where beneficiaries had potential to return to work or where their injury-related disabilities had been resolved. Since the project's inception, claims examiners have reviewed over 36,600 disability cases and acted on over 10,400 cases (28 percent of those screened by September 1996).

PRM staff actions produced an additional $12.2 million in benefit savings in FY 1996 alone. Cumulative savings produced from 1992 through 1996 are projected to equal $360 million by FY 2000, far exceeding original estimates for the project.

Case actions under the PRM initiative, along with QCM's success in returning injured employees to work, have reduced the size of the periodic roll by two percent. Previously, the roll had been increasing by four percent annually. At the end of FY 1996, 58,329 beneficiaries were receiving long-term compensation, the lowest number on the roll since 1990. With very low administrative costs, less than $14 million for the PRM project's 4-1/2 years, PRM is an extremely cost-effective initiative that has contributed directly to the reversal in compensation payment increases and assisted in curtailing the increase in the size of the disability roll.

OWCP/DOL Agency Agreements to Reduce Disability

To reduce and control agency compensation costs and to help make DOL a 'model" employer in returning injured employees to work, OWCP completed a number of agreements with DOL agencies. This effort has involved designation of national and agency workers' compensation coordinators, training of agency coordinators, and regular wmmunications between the national DOL coordinator, the agency coordinator, and the DFEC office in Kansas City.

A special emphasis was placed on return to work. For example, the Mine Safety and Health Administration (MSHA) management and occupational safety and health office, working closely with DOL's OWCP coordinator and the Kansas City DFEC office, developed a plan to offer a job to every eligible employee on MSHA's periodic roll. OWCP worked closely with MSHA in implementing the project. The result was the development of meaningful jobs by MSHA, with an effort to avoid relocation of the employee wherever possible.

In January 1996, 80 employees receiving compensation for total or partial disability were identified as eligible for job offers. As of the end of FY 1996, MSHA made 34 job offers, of which 19 have been accepted and 15 have been refused.

Placing partially recovered workers into jobs they can perform maximizes the employee's ability for self-support, minimizes his or her dependency, increases productivity, and reduces the amount of compensation. During chargeback year 19% (July 1, 1995 - June 30, 1996), cumulative savings of approximately $10.2 million can be attributed to the DOL return-to-work project.

Reinvention and Reengineering Activities

During FY 1996, the OWCP Reengineering Team (ORT) approved for full implementation several reengineering projects that began last year and identified new projects for improving or streamlining FEC work processes.

Strategic Planning Committee - Vision for 2000

The FEC Strategic Planning Team was tasked with developing a "Vision of OWCP in the Year 2000" to guide the redesign of the FEC automated system in keeping with the goals of the Strategic Plan. The team developed a paper which envisions a future FEC program focused on returning injured workers to work, administered with a minimum of paper, and measuring its success using yardsticks shared with other workers' compensation systems. The paper also described enhanced customer service, improved interactions with medical providers and employing agencies, and swifter, more effective communications among agencies, unions, medical providers, OWCP, and other stakeholders in the system. The paper became the guiding document for the Partnership ADP Team formed early in FY 1997.

Quality Case Management/Time Management Team

The QCM/Time Management Team's goal was to study how the automated data processing (ADP) system could assist claims examiners to work more efficiently and effectively. The Team's work was completed and final recommendations were submitted to the ORT for approval during FY 1996. The Team recommended a more flexible and user-driven reporting system and a simplified coding scheme for monitoring cases during return-to-work efforts, which would reduce the number of QCM codes and clarify their usage. As a result of their recommendations, a new set of QCM codes were provided to the regional offices and a new set of on-line reports have been implemented which provide individual claims examiners with an additional means of managing pending workloads while reducing the amount of paper produced by the FEC system.

Compensation Order/Delegation Team

Continuing its work from FY 1995, this reinvention team developed formats to address the most common reasons claims are denied. These reasons correspond to the five basic requirements for accepting claims: timeliness of filing, civil employee status of the injured worker, establishing that an injury occurred, establishing that the injury occurred in the performance of duty, and establishing that the medical condition found is causally related to the injury reported. These formats, added to one of the FEC program's automated letter-generating systems, contain standard language which may be customized to fit the circumstances of the case at hand. A final enhancement to this process was development of a standard format for denial of longer-term or more complicated cases, to allow for clearer statements of issues and conclusions and fuller discussions of evidence.

The final recommendations of the Compensation Order/Delegation Team for these changes to the compensation order process and format were submitted to and approved by the ORT. A FECA Transmittal was sent to the regional offices calling for implementation of the team's recommendations and providing appropriate guidance.

Review of FECA External Regulations

In FY 1996, OWCP recognized the need to revise the regulations which guide the operation of the FEC program. Through the Union/Management partners, employees were asked to review the current regulations and submit their suggestions for additions, changes, and deletions. With this input, a full-scale review of the regulations is currently underway.

Services to Claimants and Beneficiaries

Providing prompt and effective service to its customers continues to be a high priority within the FEC program. Quality customer service is not possible without ascertaining and then addressing the concerns and needs of

claimants and beneficiaries. In addition, the continued improvement in the overall quality of the FECA claims management process is dependent upon the program's ability to develop and make available to its customers effective and innovative communication mechanisms.

Oklahoma City Hammer Award

Upon hearing of the explosion at the Murrah Federal building in Oklahoma City, OWCP dispatched a three-member rapid injury response team from its DFEC office in Dallas, Texas. An on-site work station was set up to assist rescue crews in the location of victims and survivors of those who were killed. A computer link to the Dallas office was installed to begin immediate processing of victims' workers' compensation claims. Medical and compensation benefits in many cases were paid within a week to ten days. The team and staff in the Dallas office also arranged for nursing services for both the victims and their families and continued to provide medical and compensation services for many months following this disaster.

For their excellent response and professionalism during such a difficult crisis, and dedication throughout the year to provide needed services to the injured Federal employees and survivors of those Federal employees killed, the rapid injury response team and the entire staff of the Dallas DFEC office were honored on November 21, 1996, when Vice-President Gore's Hammer Award from the National Performance Review was presented to the Oklahoma City Disaster Team in Dallas, Texas.

Customer Survey Results and Customer Service Plan

Based on its most recent customer survey, DFEC has identified four areas where services to claimants need improvement. Three of these concern communications and one concerns the timely adjudication of occupational disease claims.

- A significant percentage of claimants indicated that it was difficult to reach an OWCP employee, leave a message, or have a call returned. OWCP has upgraded the telephone answering equipment in the district offices and installed Interactive Voice Response equipment in some of the offices. In addition, DFEC is providing employing agencies direct access to the case management file, the automated compensation payment system, and the bill payment file. This access should greatly reduce the need for agency personnel to telephone the district offices simply to request the status of compensation files.

- A significant percentage of claimants expressed the belief that DFEC provides inaccurate information over the telephone. To meet the need for general information, DFEC has distributed a pamphlet entitled "About Your Injury" which states what claimants can expect when filing Federal workers' compensation claims.

- Claimants also said that they did not receive a timely response to written correspondence. In an effort to improve performance in this area, managers are tracking mail on a sample basis to determine the length of time it takes the staff in their respective offices to reply to inquiries, and to improve internal procedures to reduce delay.

- Claimants indicated that their occupational disease claims were not adjudicated in a timely manner. DFEC now notifies those filing occupational disease claims of the time frames within which they can expect to have their claims adjudicated, and has adopted a much shorter time frame for simpler occupational disease cases.

DFEC will conduct surveys of its customers and review quantifiable performance areas to measure its progress in achieving its goals and meeting its customer service standards. DFEC may also develop new methods of measuring performance to ensure continued improvement in the service provided to claimants.

Interactive Voice Response System

The FEC program has developed an Interactive Voice Response (IVR) system for all district office telephone systems. The IVR is an automated attendant that gives callers a variety of options through the use of a menu system and the telephone keypad. The IVR provides callers with general information about FEC such as how to submit medical bills for reimbursement and how to file a claim. It also allows callers to query FEC's database for the status of submitted medical bills, the date of the last compensation payment, and other information related to a particular case. Finally, it can forward the call to DFEC employees or leave an electronic record of the call. IVR will smooth telecommunications traffic in the district offices and improve customer relations in the process.

Program Procedures Accessible on the Internet

Most of the information available to claims staff in the Folioviews™ on-line resource library is now also available to injured workers and their representatives, employing agency personnel, and other interested parties on the World Wide Web. This information includes the FECA, the FEC program's regulations and procedures, synopses of decisions issued by the Employees' Compensation Appeals Board, and several other resources, as well as indexes to these resources.

The information can be accessed either through the OWCP/DFEC Home Page (http://www.dol.gov/dol/esa/public/owcp_org.htm) or through a commercial Folio web server (http://www.fiengroup.com/dol/index.html). These sites are linked together so that the user can access each one from the other.

Services to Employing Agencies

The FEC program continued to provide a broad scope of technical assistance and other services to employing agencies during FY 1996. In addition to providing training and guidance to Federal agency and employee labor organization personnel through ongoing seminars, workshops, and various outreach programs, FEC also put in place several new initiatives designed to improve claims processing and return-to-work opportunities for injured workers.

Improvement in Timeliness of Agency Claims Submission

One of the FEC program's primary goals is to return injured Federal employees to work, preferably within the first year of disability. Success in this endeavor reduces the number of lost production days and the amount of money which agencies pay in compensation costs.

Early receipt of notices of injury provides OWCP with a means to quickly identify injured workers and begin case management procedures. To accomplish this aim, OWCP is asking employing agencies to ensure that OWCP receives notices of injury within 14 calendar days from the date of receipt by the agency.

The timely receipt of claims for compensation is also a major concern. Agencies need to submit claim forms so that OWCP receives them within seven calendar days from the date the agency received them from the employee.

OWCP is committed to working with agencies to improve their performance in submitting notices of injury and claims for wmpensation. In FY 1996, OWCP established baselines of individual agency performance for submitting notices of injury and claims for compensation. In FY 1997, OWCP is setting percentage goals for improvement from these baselines.

Initial Testing of Agency Server with the Department of Defense

OWCP has developed an Agency Query System (AQS) using Internet technology that will allow Federal agencies to have immediate access to OWCP data on the status of an injured worker's claim. Agencies use the Internet to access a secure web server at the DFEC national office. This server contains current data, updated daily, on all claims filed with DFEC. The data available for review includes current case status information, compensation payment history, and medical bill payment history. The secure server technology encrypts the data while it is on the Internet so unauthorized parties cannot view it. The AQS was pilot-tested by personnel in the Department of Defense in FY 1996 to be available for all agencies to use in early FY 1997.

Baseline Study of Disability Outcomes

OWCP's Division of Planning, Policy and Standards (DPPS) completed Phase I of its ongoing Baseline Study of FEC program outcomes. This first phase looked at case outcomes considered most important in the injury compensation and disability management fields: days lost from work, cost of wage loss compensation benefits, and cost of medical services. The study was designed as a direct "pre" vs. "post" comparison of short- and medium-term outcomes using FY 1991 - FY 1992 as the base period and FY 1994 - FY 1995 for comparison. This allowed for direct measures of the impact of recent changes in the FEC program: QCM procedures, the use of nurses for early intervention to improve case management, short form closure procedures for minor injury claims, and improvements to the fee schedule and the medical bill pay system.

Findings were encouraging. When claims histories were tracked for one year following the initial date of injury, DPPS found that average (mean) number of days lost from work fell by 4.8 percent. The mean constant dollar cost of wage loss compensation benefits fell by 3.7 percent. Reductions on the medical side were even more impressive. The mean cost of medical benefits fell by four percent in nominal dollars. When adjusted for inflation according to the Bureau of Labor Statistics' Consumer Price Index for medical care, the mean cost of medical benefits fell by 18.4 percent.

During Phase II of the project, DPPS will extend the analysis to look at a full two years of experience for each fiscal year cohort of cases; the scope of analysis will be extended to include cases created during subsequent fiscal years; and the methodology will be refined to allow use of outcome measures for QCM standards development as envisioned in the OWCP Strategic Plan.

Automation

New ESA Platform - Hardware/Software Installations

During the past year, OWCP continued a three-year project to replace aging major computer systems' hardware and software for the FEC program, which is shared by other Employment Standards Administration (ESA) programs, upgrade networking systems, and develop "paperless office" and electronic data interchange systems. Congress, through OWCP's FY 1995 appropriation, granted the Secretary of Labor the authority to deposit into the Special Fund amounts collected from agencies to fund the capital investment projects. Section 8147(c) of FECA requires that certain agencies (as defined by the Act) pay their "fair share" of the cost to administer FECA claims filed by their employees. The balance of the assessments collected which are not identified for spending are deposited into the U.S. Treasury as miscellaneous receipts. In FY 1996, OWCP committed nearly $13 million of the "fair share" funds to design, develop, and test the prototype system.

Among the technical improvements achieved is a minicomputer devoted to providing current information on individual claims to Federal employers (Agency Query System), using secured Internet technology. FEC also tested and began implementation of the Interactive Voice Response system, which allows claimants and medical providers to obtain automated information about compensation payments and medical bills. The program also placed basic FECA information on the World Wide Web, making it accessible to the public.

FEC staff experienced a transformation of office software with OWCP's adoption of Microsoft Office™ software and faster microcomputers, linked to new and larger minicomputers in the district offices. The minicomputers support other ESA applications and the Longshore program as well. With new hardware and software, OWCP greatly expanded its services and links with the public.

In future development actions, FEC will take major steps toward creation of a "paperless office" by implementing electronic billing for pharmacies and hospitals, piloting electronic receipt of first injury claims from employing agencies, and piloting document imaging in DFEC district offices.

FEDERAL EMPLOYEES' COMPENSATION ACT

Number of Employees (FTE Staffing Used)	904
Administrative Budget	$ 65.1 Million*
Cases Created	175,052
Wage Loss Claims Initiated	20,392
Total Compensation and Benefits	$1,898.4 Million**
Medical Bills Paid	1,478,640

* Direct administrative costs to OWCP only; excludes DOL support costs and "fair share" capital investment funds.

**Compensation, medical, and survivor benefits. Also, this benefit number is reported as $1,983.9 million in the 1998 Congressional Budget submission. Due to a one-time adjustment that accounts for liabilities accrued in FY 1996 that actually were paid in FY 1997, the reported benefit obligations for FY 1996 are artificially overstated by approximately $85.5 million when compared to FY 1995.

BLACK LUNG BENEFITS ACT

Introduction

In 1996, OWCP's Division of Coal Mine Workers' Compensation (DCMWC) completed its twenty-third year administering the Black Lung program. The initial Black Lung benefits program was enacted as part of the Coal Mine Health and Safety Act of 1969, the first comprehensive Federal legislation to regulate health and safety conditions in the coal industry. This law created a temporary system to compensate past victims of dust exposure in the mines with public funds administered by the Social Security Administration (SSA).

The number of claims filed in the early 1970's far exceeded pre-enactment estimates. The Act was amended by the Black Lung Benefits Act of 1972 (BLBA) to require the use of simplified interim eligibility criteria for all claims filed with SSA, and to transfer the receipt of new claims to DOL in 1973. OWCP assumed the responsibility for processing and paying claims on July 1, 1973. Most claims filed prior to that date remain within the jurisdiction of SSA, which is also responsible for processing and paying claims filed by the survivors of these miners. As of September 30, 1996, there remained 109,107 beneficiaries receiving total monthly cash benefits of approximately $54 million from SSA.

Early in 1978, Congress enacted two new statutes that further amended the Act. The Black Lung Benefits Reform Act of 1977 (Public Law 95-239) again mandated the use of interim criteria based on the use of presumptions to resolve old unapproved claims. Public Law 95-227, the Black Lung Benefits Revenue Act of 1977, created the Black Lung Disability Trust Fund (Trust Fund), financed by an excise tax on coal mined and sold in the United States. The law authorized the Trust Fund to pay benefits in cases where no responsible coal mine operator could be located and transferred liability for all claims filed with DOL based on employment in the coal industry before 1970 from individual employers to the Trust Fund. These amendments made the Federal program permanent, although state benefits would continue to offset Federal compensation wherever they were available.

Current administration of the Black Lung program is governed by 1981 legislation: Title I is the Black Lung Benefits Revenue Act of 1981, and Title II is the Black Lung Benefits Amendments of 1981. The 1981 Amendments tightened eligibility standards, eliminated certain burden of proof presumptions, and temporarily increased the excise tax on coal to address the problem of a mounting insolvency of the Trust Fund, which was by then indebted to the U.S. Treasury by over $1.5 billion.

The 1981 amendments slowed but did not stop the growth of the indebtedness of the Trust Fund, which by the end of 1985 had increased to over $2.8 billion. The Consolidated Omnibus Budget Reconciliation Act of 1985, enacted in 1986, increased the excise tax by an additional 10 percent through December 31, 1995, and put into effect a five-year moratorium on the interest charges due the Treasury on the Trust Fund's accumulated debt. In late 1987, Public Law 100-203 extended the duration of the increased tax rates through December 31,2013. These budget-related legislative actions made no further changes in the Act's eligibility criteria and adjudication procedures.

Benefits and Services

The Black Lung program provides two types of benefits, monthly and medical. The program pays a standard monthly benefit (income replacement) to miners determined to be totally disabled from black lung disease, and to certain eligible survivors of totally disabled miners. The monthly rate of benefits is adjusted upward to provide additional compensation for up to three eligible dependents.

The program provides two types of medical services related to coal mine workers' pneumoconiosis (black lung disease): diagnostic testing for all miner claimants to determine the presence or absence of black lung disease, and the degree of associated disability; and medical coverage for treatment of black lung disease and directly related conditions for miners entitled to monthly benefits.

Total DOL Black Lung program expenditures for these benefits in FY 1996 were $499.6 million, a decrease of $26.0 million from FY 1995. In 1996, benefits were provided from the Trust Fund to approximately 66,000 beneficiaries each month. The Trust Fund had a balance of $7.8 million at the end of FY 1996, with an outstanding debt to the Treasury of $5.1 billion.

In FY 1996, the United Mine Workers of America (UMWA) Health and Retirement Funds were reimbursed $6.4 million from the Trust Fund for black lung related medical care provided by them to UMWA/OWCP joint beneficiaries.

As an additional benefit to claimants, the law provides for payment of attorneys' fees and legal costs incurred in connection with approved benefit claims. The fees must be approved by program adjudication officers. During the past year DCMWC processed 439 fee petitions and paid approximately $1.4 million in attorneys' fees from the Trust Fund.

As the claims processing workload has declined, efforts and resources have shifted toward improved automated data processing capabilities, more sophisticated financial management, and speedier and more comprehensive debt resolution. The increased efforts devoted to control and coordination of benefit payments illustrate the change in program focus from claims adjudication to benefit delivery and management. Larger amounts of staff effort are required to keep payment data current and to conduct periodic reviews of claims in payment status.

In FY 1996, 1,780 claims were forwarded for formal hearings before the Office of Administrative Law Judges (OALJ) and 1,178 claims were forwarded for appeals to the Benefits Review Board (BRB). At the end of FY 1996, the OALJ had 2,444 claims pending while 1,012 were pending before the BRB.

Medical Services

The Black Lung program provides both diagnostic and medical treatment services. Diagnostic testing is provided for all miner claimants to determine the presence or absence of black lung disease, and the degree of associated disability. These tests include a chest x-ray, pulmonary function study (breathing test), arterial blood gas study, and a physical examination.

Medical coverage for treatment of black lung disease and directly related conditions is provided for miner beneficiaries. This coverage includes prescription drugs, office visits, and hospitalizations. Also provided, with specific approval, are items of durable medical equipment, like hospital beds, home oxygen, and nebulizers; outpatient pulmonary rehabilitation therapy; and home nursing visits.

Total medical expenditures under the Black Lung program during FY 1996 were $95.0 million. This includes payments of $2.3 million for diagnostic services, $86.3 million for medical treatment, and $6.4 million in reimbursements to the UMWA Health and Retirement Funds for costs of treating black lung beneficiaries. Approximately 634,000 bills were processed during the year.

FY 1996 was the sixth complete year of utilization of the National Drug Codes (NDC) for all pharmacy bills. This program enables DCMWC to monitor more effectively both the usage and pricing of the drugs dispensed. The pricing system, adopted August 1, 1990, allows a dispensing fee of 25 percent above the drug's wholesale price, but never less than $2.50 or more than $10.00 per prescription. Pharmacies in the coal regions were already familiar with the NDC system since it had been adopted previously by other health insurers, including the UMWA Health and Retirement Funds. Savings realized during FY 1996 were nearly $1.2 million, or 9.5 percent of the billed prices.

Other medical insurance carriers (primarily Medicare and Medicaid) continued their efforts to route all black lung related medical bills to DCMWC for initial processing. Since the Black Lung program is the primary carrier for these bills, initial review and payment responsibilities lie with the Trust Fund or the responsible mine operator (RMO).

Accomplishments

Reengineering and Reinvention Initiatives

During FY 1996, DCMWC continued implementation of reengineering and streamlining recommendations developed during FY 1994 and FY 1995. Implementation of four recommendations during the year resulted in:

- A greatly simplified system for re-certifying coverage of home oxygen for black lung patients. The new system both reduced program costs and eliminated the need for patients to undergo repeated invasive medical testing.
- Elimination of several steps in the benefit payments process which were found to be unnecessary.
- Reduction of time-consuming internal reporting of actions through greater reliance on the automated system.
- Program-wide usage of an automated correspondence generation system.

Refocusing reengineering efforts as a result of front-line worker involvement has enhanced employee morale and resulted in significant cost savings and improvements in service. In recognition of past reengineering successes, front-line workers were again asked to recommend projects which they believe have great potential for savings in cost and time. Two teams were established to implement the top priority suggestions received.

An employee/management team was appointed to review the entire process of claims adjudication, from the point of the claim's receipt to the release of the initial finding on the eligibility of the claimant. The team has been looking for ways to enhance customer service, accelerate the adjudicatory process, reduce the period between the receipt and the release of the Ending, and increase the percentage of claims being ultimately resolved at the initial level.

A similar team was appointed to review and revise the automated coding scheme used to record claim actions. The team's goal is to streamline the process and develop procedures to assure that all appropriate claim actions are recorded in the system in order to monitor the timeliness and completion of action on each claim.

In February 1996, DCMWC's Greensburg, Pennsylvania District Office was selected to receive one of the first four National Partnership Awards from the National Partnership Council, for implementing a reengineering initiative. The customer outreach program was jointly developed by the office's district director and representatives of his staff. Under this program, office staff visited local shopping malls to set up temporary contact points to distribute Black Lung program information, receive new claim applications, and resolve claims-related problems.

Customer Survey and Customer Service Plan

DCMWC conducted a mail survey of three categories of customers during FY 1996 to determine the quality of the services provided, and to identify areas for improvement. The three categories were Congressional offices, claimant legal representatives, and responsible coal mine operators, including their insurance carriers and servicing agents.

Survey forms were sent to 52 Congressional offices. The offices were asked to rate DCMWC personnel on the quality, timeliness, accuracy, and courtesy in answering Congressional inquires. Ninety-two percent of the respondents indicated that, overall, DCMWC's performance was either very good or good.

Customer-specific survey forms were also sent to 75 attorneys who have represented black lung claimants. Seventy-eight percent of the respondents rated DCMWC's performance very good or good. Some expressed dissatisfaction with the timeliness of the processing of their fee petitions. Since records show that DCMWC processed 97 percent of its fee petitions within 30 days during the past two years, the dissatisfaction may be with petitions sent to the other adjudicative bodies. A small majority of the respondents (53 percent) said they found that informal conferences helped in resolving disputed issues in claims. During FY 1996, DCMWC reviewed possible initiatives to improve the informal conference process.

A third customer group, responsible coal mine operators, insurance carriers, and servicing agents, were surveyed during 1996. Ninety-three percent of the respondents indicated that DCMWC's performance has been very good or good.

The informal conference was the one DCMWC activity which consistently drew mixed reviews. The Black Lung program is seeking ways to upgrade the effectiveness of these conferences through regulatory changes and enhanced conferencing skills.

Computer Services Contract Recompetition

DCMWC drafted a Request for Proposal (RFP) to re-compete its existing computer services contract which expires on September 30, 1997. The RFP was released in the fall of 1996 with anticipated award of the contract in late spring 1997. The replacement contract, effective FY 1998 through FY 2001, will include the full range of services of the existing contract, and will add some significant new requirements. Among the new services will be: moving the existing mainframe applications to a new processing environment, with transition to relational database technology using INFORMIX Version Seven; transition from the mainframe to a symmetric multi-processor to be located at a contractor facility; and introduction of electronic submission and processing of as many medical bills as possible without compromising the program's billing policies.

Review and Revision of Program Regulations

DCMWC reviewed its eligibility and procedural regulations during FY 1996, pursuant to Executive Order 12866, with the goal of eliminating outdated and unnecessary rules and streamlining processes. A package of proposed

regulatory changes, the first since 1983, was developed and forwarded to the Office of Management and Budget at the end of the fiscal year. The proposed regulatory changes will:

- Facilitate alternative dispute resolution during the informal conference process.
- Streamline litigation by encouraging the early development and submission of evidence.
- Reduce the costs of copying and mailing services.
- Raise the dollar limit for prior approval of coverage for medical equipment.
- Revise existing rules to make them more customer-oriented.

No additional administrative costs are associated with these changes. On the contrary, savings are anticipated through these streamlining efforts.

Black Lung Disability Trust Fund

The Trust Fund is administered jointly by the Secretaries of Labor, Treasury, and Health and Human Services. The Trust Fund was established by the Black Lung Benefits Revenue Act of 1977 (BLBRA), to shift the responsibility for the payment of black lung benefit claims from the Federal Government to the coal industry. Those claims approved by SSA, under Part B of the BLBA, continue to be paid from the Federal Government's general revenues.

Trust Fund revenues consist of monies collected from the coal mine industry, under the provisions of BLBRA of 1977, as amended, in the form of an excise tax on mined coal that is sold; funds collected from RMOs for monies they owe the Trust Fund; payments from various fines, penalties, and interest; refunds collected from claimants and beneficiaries for overpayments; and repayable advances obtained from Treasury's general fund when Trust Fund expenses exceed revenues. Total revenues received by the Trust Fund in FY 1996 were $997.4 million.

The major source of revenue to the Trust Fund is an excise tax on mined coal sold or used by producers. The tax is collected by the Internal Revenue Service (IRS), U.S. Department of Treasury, and transferred to the Trust Fund on a monthly basis. In 1981, as an amendment to the IRS Code of 1954, the Black Lung Benefits Revenue Provisions added a temporary special tax, increasing the previous excise tax to $1.00 per ton for underground coal and $0.50 per ton on surface mined coal, with a cap of four percent of sales price.

In 1986, Congress passed the Consolidated Omnibus Budget Reconciliation Act of 1985, which increased excise tax rates by 10 percent and imposed a five-year moratorium on the accrual of interest on all repayable advances, which expired on September 30, 1990. The rates (per ton) for underground and surface mined coal were raised to $1.10 and $0.55 respectively, and the cap was increased to 4.4 percent of the sales price, for the period October 1, 1985, through December 31, 1995. In December 1987, Public Law 100-203 lengthened the duration of these increased tax rates to December 3 1, 2013, after which the rates will revert to their original levels of $0.50 underground, $0.25 surface, and a limit of two percent of sales price.

In FY 1996, the Trust Fund received a total of $614.5 million in tax revenues. In comparison, the revenue levels in FY 1995 and FY 1994 were $607.9 million and $567.1 million, respectively.

An additional $9.3 million was collected from RMOs in interim benefits, fines, penalties, and interest during FY 1996. These funds directly contribute to reducing the amount of repayable advances needed by the Trust Fund.

Trust Fund expenditures are made for:

- Monthly and medical benefits to eligible miners and/or their families for approved claims involving miners whose mine employment ended before 1970, or for claims in which no operator liability can be determined.
- Administrative costs incurred in the operation of the Black Lung program.
- Accrued interest on repayable advances from the Treasury.

Repayable advances are obtained from the U.S. Treasury when Trust Fund resources are not sufficient to meet program obligations. These advances are to be repaid to Treasury's General Fund with interest. Growth in the Fund's debt (advances outstanding) slowed considerably during 1986-90 due to a legislated moratorium on the accrual of interest on advances and larger than expected increases in tax revenues. Interest payments resumed in 1991, and by the end of FY 1996, the Trust Fund's cumulative debt to the U.S. Treasury was $5.112 billion.

Total Trust Fund disbursements during FY 1996 were $992.1 million. These expenditures included $499.6 million for benefits (income benefits of $404.6 million and medical benefits of $95.0 million), $445.2 million for interest payments, and $47.3 million to administer the program ($27.2 million in OWCP direct costs and $20.1 million for legal and various financial management and investigative support provided by SOL, OAIJ, Benefits Review Board (BRB), Office of the Inspector General (OIG), and the Department of the Treasury).

Insurance/Self-Insurance

Section 423 of BLBA requires that each coal mine operator subject to the Act secure payment of any benefits liability by either qualifying as a self-insurer or insuring the risk with a stock or mutual company, an association, or a qualified fund or individual. Any coal mine operator failing to secure payment is subject to a civil penalty of up to $1,000 for each day of noncompliance. State workers' compensation laws also require coal mine operators to obtain insurance or qualify as a self-insured employer to cover employee benefit liabilities incurred due to occupational diseases that are covered by state law. If state workers' compensation is paid for pneumoconiosis, any Federal black lung benefit received for that disease would be offset or reduced by the amount of the state benefit on a dollar for dollar basis. As of September 30, 1996, there were 2,771 Federal black lung claims being offset due to concurrent state benefits.

Regulation of insurance carriers and the premium rates they charge has been and continues to be the responsibility of the states where they operate. Twenty-six states set occupational disease premium rates for underground exposure. The rates vary on a state-by-state basis due to such factors as the population of miners in the state, the number of claims filed, and the cost of benefits.

According to estimates by DOL's Mine Safety and Health Administration (MSHA), there were approximately 2,200 coal mine operators subject to the requirements of the Act. Approximately 350 coal mine operators and subsidiaries and/or affiliates were authorized by the Secretary of Labor to self-insure their obligations under the Act.

MSHA has provided direct computer access to its data base system which enables DCMWC to continuously check to ascertain that currently operating entities are meeting the insurance requirements for the Federal liability.

Litigation

Courts of Appeals

During FY 1996, the courts of appeals issued 110 decisions in cases arising under the Black Lung Benefits Act. In addition, 169 appeals were filed. The following summarizes the most significant appellate decisions.

Duplicate Claims: 20 C.F.R. § 725.309. The regulations implementing the Act allow a miner whose earlier claim for benefits has been denied to file a subsequent ("duplicate") claim and recover benefits if his black lung disease has deteriorated to the point of total disability. In order to avoid denial of the duplicate claim on the same grounds as the earlier denial, however, the regulation requires the miner to establish "a material change in conditions". During this fiscal year, the Third and Fourth Circuits joined the Sixth Circuit in endorsing the Director's interpretation of "material change": The administrative law judge (ALJ) must consider all of the **new** evidence in order to determine whether the miner has proved, with that evidence alone, at least one of the elements of entitlement (e.g., pneumoconiosis or total disability) adjudicated against him in the earlier claim. If so, a material change has been established, and the ALJ must then consider the entire record in order to determine whether the miner is entitled to benefits. ***Lisa Lee Mines v. Director, OWCP,*** 86 F.3d 1358 (4th Cir. 1996) ***(en bane), cert. denied,*** 117 S.Ct. 763 (1997); ***LaBelle Processing v. Swarrow,*** 72 F.3d 308 (3d Cir. 1995); ***Sharondale Corp. v. Ross,*** 42 F.3d 993 (6th Cir. 1994). Two other courts, however, have interpreted the regulation differently. ***Wyoming Fuel v. Brandolino,*** 90 F.3d 1502, 1512 (10th Cir. 1996); ***Sahara Coal v. OWCP,*** 946 F.2d 554 (7th Cir. 1991).

In a related case arising under the duplicate claims regulation, a Seventh Circuit panel held that Section 725.309(c)'s merger provisions required that a duplicate claim filed on or after April 1, 1980, the effective date of the Department's permanent 20 C.F.R. Part 718 regulations, automatically merges with any earlier finally denied claim which was subject to review under the more permissive 20 C.F.R. Part 727 interim regulatory criteria. The merged claim must then be evaluated under the Part 727 criteria. The panel's decision was vacated, however, when the court granted the petitions for ***en banc*** rehearing filed by the Director and the employer. The case was argued before the full court on December 18, 1996. ***Peabody Coal v. Spese,*** 94 F.3d 369, ***vacated and reh'g granted,*** 105 F.3d 329 (7th Cir. 1996).

Hearing Requests. Any party to a claim has the right to a formal hearing before an ALJ concerning any contested issue of fact or law unresolved by OWCP's deputy commissioner. Several decisions this fiscal year addressed the exercise of this right. In ***Freeman United Coal Mining v. Director, OWCP,*** 94 F.3d 384 (7th Cir. 1996), the court held that a claimant's hearing request conditioned on some future event is legally ineffective to prevent the claim from being denied as abandoned under 20 C.F.R. § 725.410(c). In response to DOL's informal denial of benefits, the claimant wrote to the deputy commissioner indicating an intent to submit additional evidence and, if the additional evidence submitted was found insufficient to prove the claim, to request a formal hearing. Claimant then waited eighteen months to submit additional evidence. The court reasoned that because the claimant did not either submit additional evidence or unconditionally request a hearing within the sixty-day period allowed under 20 C.F.R. § 725.410(c), the claim was abandoned.

Another case held, however, that a claimant's hearing request should have been granted. In ***Plesh v. Director, OWCP,*** 71 F.3d 103 (3d Cir. 1995), the deputy commissioner issued an order to show cause why the miner's award should not be modified to reflect that eligibility for benefits had ceased and the award should be terminated. The miner appealed. Instead of referring the case to the OALJ, however, the deputy commissioner issued an order modifying the award and terminating benefits. The miner did not appeal that order; instead, two years later he filed a duplicate claim (which was denied on the ground that the miner failed to establish a material change in conditions). The Third Circuit reversed, holding that the miner should have been granted a hearing pursuant to his appeal of the deputy commissioner's show cause order and, consequently, that the miner's earlier claim remained pending.

Responsible Operator Identification. In ***Director, OWCP v. Truce Fork Coal,*** 67 F.3d 503 (4th Cir. 1995), the court considered several issues which arose because the miner's most recent coal mine employer (which ordinarily would be named as the employer responsible for the payment of any benefits awarded) was not capable of assuming liability for the payment of continuing benefits. The court held that DOL may name a miner's next most recent employer, or its successor, as the putative responsible employer if his most recent employer is not capable of assuming its liability for the claim. The burden is on the Director, however, to develop the evidence necessary to demonstrate that the miner's most recent employer is not capable of assuming its liability. Where DOL neither develops the evidence necessary to support its decision to name a particular employer nor proceeds against all putative responsible employers at each stage of the claim, and the miner then establishes his entitlement to benefits against an incorrectly named employer, liability for the payment of benefits is properly assigned to the Trust Fund.

Benefits Review Board

During FY 1996, DOL filed over 1,100 pleadings with the Benefits Review Board. The BRB issued several decisions which significantly affect the Secretary's administration of the benefits program.

Modification of Claims. Under current precedent, the 30 day period for appealing an ALJ's decision does not commence until the decision becomes effective, which occurs when the decision is filed in the office of the district director. In ***Wooten v. Eastern Associated Coal Corporation,*** 20 Black Lung Rep.(MB) l-21(1996), the Board, at the Director's urging, held that the one year period for requesting modification of an ALJ's decision denying benefits also begins when the decision becomes effective.

In another case, the Board held that not only claimants, but also coal mine operators, have a statutory right to request modification of a black lung award on the grounds of a mistake in fact. The Board relied on the clear language of the Act's modification provision which permits any party to a claim to request modification. ***Branham v. Bethenergy Mines,*** 20 Black Lung Rep.(MB) l-27 (19%).

Responsible Operator Determinations. At the Director's request, the Board has adopted the reasoning of the Fourth Circuit in ***Director, OWCP v. Trace Fork Coal Company,*** 67 F.3d 503 (4th Cir. 1995), and held that a coal mine operator which did not employ the miner most recently may nevertheless be held liable as the responsible operator if the miner's most recent employer is not capable of assuming liabihty for benefits. ***Cole v. Eart Kentucky Collieries,*** 20 Black Lung Rep.(MB) l-50 (1996).

In ***Williams v. Lovilia Coal Company,*** 20 Black Lung Rep.(MB) 1-58 (1996), ***appeal docketed,*** No. 96-2980 (7th Cir. Aug. 12,1996), the Board held that the Director may name as a responsible operator a partnership which operates a coal mine, and need not name the partners individually. The Board reasoned that the Act includes partnerships among the entities which can be coal mine operators, and that, under the Federal Rules of Civil Procedure, a partnership may sue or besuedinitsownname.

Relationship and Dependency. Black lung benefits may be augmented for up to three dependents. In ***Blair v. R & E Coal Company,*** 20 Black Lung Rep.(MB) 1-15 (1996), the Board, adopting the Director's position, held that the Act does not require the child of a miner's surviving spouse to also have been reliant on or related to the miner for the child to be considered the survivor's dependent.

Enforcement

In ***United States v. Insurance Company of North America,*** 83 F.3d 1507 (D.C.Cir. 1996), a case of first impression, the U.S. Court of Appeals for the District of Columbia Circuit interpreted the standard surety bond that many coal mine operators use to satisfy the Department's requirement for approval to self-insure benefits liability. The district court had agreed with the Department that the surety is liable for all claims based on employment with the operator that ended at

any time prior to cancellation of the bond, including employment that ended before the bond went into effect. The court of appeals held, however, that the surety's liability is limited to those claims that are based on employment with the operator that ended while the bond was in effect. The court agreed with the Department on an issue involving the six-year statute of limitations, holding that the limitations period does not commence until the Department demands payment by the surety.

In the largest case to date involving the Department's attempt to recoup interest from coal mine operators on interim medical benefits paid by the Black Lung Disability Trust Fund, the U.S. District Court for the Western District of Pennsylvania awarded the Department over $200,000 from Consol Energy, Inc. ***Reich v. Consol Energy, Inc.***, 933 F. Supp. 472 (W.D.Pa. 1995). The court specifically rejected an argument that the Department's delay in providing the coal mine operator with a copy of the medical bills at issue entitled the operator to be relieved of the interest it owed.

The Department resolved several other major enforcement cases during FY 1996. In ***Deffendoll et al. v. Old Ben Coal Company***, No. 96-C-O343 (N.D.Ill.), the Department intervened in an enforcement action brought by two black lung claimants in order to secure the reimbursement of over $50,000 in benefits.The Department obtained without litigation reimbursement of over $50,000, including interest, from U.S. Steel previously paid by the Trust Fund as interim benefits to claimants.The Department also received payment of over $10,000 in interest on interim medical benefits from the Pittston Goal Group.

BLACK LUNG BENEFITS ACT

Number of Employees (FTE Staffing Used)	260
Administrative Budget	$ 27.2 Million
Total Compensation	$499.6 Million
Trust Fund Beneficiaries in Pay Status at End of Fiscal Year	
Monthly	64,501
Medical Benefits Only	16,762
Responsible Operator Beneficiaries in Pay Status at End of Fiscal Year	
Monthly	7,384
MB0	3,384

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Introduction

Enacted in 1927, the Longshore and Harbor Workers' Compensation Act (LHWCA) provides compensation for lost wages, medical benefits, and rehabilitation services to longshore, harbor and other maritime workers who are injured during their employment or who contract an occupational disease related to employment. Survivor benefits are also provided if the work-related injury or disease causes the employee's death. These benefits are paid directly by an authorized self-insured employer, through an authorized insurance carrier, or in particular circumstances, by an industry financed Special Fund.

In addition, LHWCA covers a variety of other employees through the following extensions to the Act:

- The Defense Base Act of August 16, 1941, provided the benefits of LHWCA to employees on overseas military, air, or naval bases or other areas under a public works contract performed by contractors with agencies of the United States Government.

- The Nonappropriated Fund Instrumentalities Act of June 19, 1952, covers civilian employees in post exchanges, service clubs, etc. of the Armed Forces.

- The Outer Continental Shelf Lands Act of August 7, 1953, extended Longshore benefits to employees of firms working on the outer continental shelf of the United States engaged in exploration for and development of natural resources, such as off-shore drilling enterprises.

- The District of Columbia Workmen's Compensation Act (DCCA), passed by Congress on May 17, 1928, extended the coverage provided by the Longshore Act to private employment in the District of Columbia. Since the District of Columbia passed its own workers' compensation act effective July 26, 1982, OWCP handles claims only for injuries prior to that date.

The original law, entitled the Longshoremen's and Harbor Workers' Compensation Act, provided coverage to certain maritime employees injured while working over navigable waters. These workers had been held excluded from state workers' compensation coverage by the Supreme Court (***Southern Pacific Co. v. Jensen***, 244 U.S. 205, 1917).

Total disability compensation and medical benefits paid by insurers and self-insurers under LHWCA and its extensions totaled approximately $496.4 million in Calendar Year (CY) 1995, a 4.7 percent decrease compared to CY 1994.

Operations

In FY 1996, total expenditures for program operations and the overall administration of LHWCA were $22.3 million, of which $9.0 million were the direct costs of OWCP. The remaining $13.3 million were the costs of legal, audit, and investigative support provided by the OALJ, BRB, SOL and the OIG. The Division of Longshore and Harbor Workers' Compensation (DLHWC) employed 114 people in the national office and 13 district offices.

During FY 1996, 27,748 lost-time injuries were reported under the Act by approximately 410 self-insured employers and 405 insurance carriers. At year's end, 16,976 maritime and other workers were in compensation payment status.

Conferences and Appeals

A major function of the Longshore claims examiner is the adjudication of disputed issues which arise in claims. While not a judge or hearing officer, a claims examiner does function as a mediator in informal proceedings designed to help the parties involved reach amicable agreements and avoid the time and expense involved in formal litigation. In FY 1996, the district offices conducted approximately 3,200 informal conferences which were designed to establish the facts in each case, define the disputed issues and the positions of the parties in respect of those issues, and to encourage the voluntary resolution of those issues by means of agreement and/or compromise. At the conclusion of each informal conference, a recommendation for resolving the issues and disposing of the claim is made by the claims examiner. If either the claimant or the employer (or insurance carrier) does not agree with the recommendations made and requests a formal hearing, the case is referred by the Longshore district director to the OAIJ. Decisions issued by ALJs are appealable to the BRB whose final decisions are then subject to review by the appropriate United States Court of Appeals.

During FY 1996, the OAIJ received about 4,100 new LHWCA/DCCA cases for formal hearings. At the BRB, nearly 500 new appeals were received in FY 1996.

Constituent Services

DLHWC provides technical assistance to the maritime industry and the workers whom the law is designed to serve. Since the passage of the original Act, administrative personnel have helped claimants file and process injury reports and claims. DLHWC carries on this tradition with program staff providing covered workers and their dependents with assistance in processing claims and required reports as well as information on obtaining medical and vocational rehabilitation. This aid is not a monetary benefit to the claimant, but it is a valuable asset to an injured worker attempting to seek compensation for an injury.

Longshore district offices also conduct seminars for union members and officials, and for organizations representing industry management. The offices regularly schedule several seminars each year to which employer and employee representatives are invited.

Numbered notices are used by the national office to disseminate information to over 800 insurance carriers and self-insured employers.

Accomplishments

Reengineering Team Initiatives and Reinvention

Longshore Case Development Team. The final recommendations of the Case Development Team were submitted to and approved by the OWCP Reengineering Team. All of the recommendations by the partnership team were implemented during FY 1996, reducing front-end Longshore case processing procedures. The Case Development Team studied the entire Longshore case management process and submitted a series of recommendations to improve customer service, streamline and better define major procedures, combine and eliminate certain forms, and empower the district offices to adopt procedures which would work best in their particular regions. One of the major recommendations implemented as a result of team's efforts was the streamlining of medical report procedures. DLHWC eliminated the procedure that requires a final medical report on all routine primary and non-controverted cases. This action will result in saving staff time and eliminating the additional burden on the physician and employer/carrier of submitting the report.

PC Automated Claims Transactions Electronic Process. The procedures for processing reports of non-receipt of benefit payments were significantly improved in FY 1996 when an electronic process called PC Automated Claims Transactions (PC-ACT) was implemented. The previous procedure, in use for many years, required the manual preparation of a Standard Form 1184 each time a report of non-receipt of a payment was received. This form was mailed to the Treasury Department and manually handled at that end also. The result was a lengthy process that typically required 30 to 60 days to resolve a missing check problem.

The PC-ACT procedure provides for the resolution of most missing check problems within one week. Missing payment information is transmitted to the Treasury once per week on an electronic disk so that processing can be handled easily and quickly.

The new procedure, immediately successful with no start up problems, has been a big assistance to Longshore claimants, since a decision on whether to re-issue a missing check can now be made in a matter of weeks rather than months.

Connect:Direct. A new procedure, called "Connect:Direct" was implemented which improved the transfer of payment information to the Philadelphia Financial Center.

For many years, all of the Longshore program's payment processing was handled by the Washington Financial Center. Since this center was only a short distance from the national office, computer tapes containing the bi-weekly payment roll could easily be hand-carried between the two locations. However, when the payment processing was assigned to the financial center in Philadelphia, DLHWC had to determine how to most efficiently transfer this information.

Initially, the Longshore program obtained permission from the Treasury Department to transfer the tapes to the Philadelphia Financial Center from a Treasury office located in Hyattsville, Maryland, to which the tapes were carried by messenger. This did not prove to be the most efficient and effective arrangement. DLHWC continued to search for alternatives, finally determinin g the best way to go was "Connect:Direct".

Specialized equipment and training had to be coordinated with Treasury, but this challenge was met and the system is up and running Since "Connect:Direct" electronically transmits the payment information to Treasury's computer at the Philadelphia Financial Center, the preparation and handling of tapes is no longer necessary The system, still new in FY 1996, is working very well and has greatly simplified the national office's processing effort for the bi-weekly roll.

Downsizing and Restructuring. In line with the government's goals for streamlining operations, during FY 1996 DLHWC's on-board staffing was reduced from 121 to 114 personnel. In addition, operation of the Longshore program in the San Francisco region was restructured. One district director now directs and oversees all Longshore program operations for Districts 13 (San Francisco), 15 (Honolulu), and 18 (Long Beach). The district offices located in San Francisco and Honolulu were re-designated as suboffices.

Realignment of District Office Boundaries

During FY 1996, jurisdiction for the processing of claims under LHWCA and its extensions for the State of Mississippi was transferred from District 6 with headquarters in Jacksonville, Florida, to District 7 located in New Orleans, Louisiana. The realignment was made in accordance with changes in the rules governing the administration of the Longshore Act which became effective on November 1, 1995. Consequently, on or after April 1, 1996, all new cases for injuries occurring in Mississippi are being reported to the New Orleans district office.

This jurisdictional change will improve customer service by providing greater convenience of location to DLHWC's servicing district office for injured workers and their employers in the State of Mississippi. It will also provide a more evenly balanced distribution of workload between the Jacksonville and New Orleans district offices and reduce travel costs associated with the adjudication of these cases.

LHWCA Regulatory Changes

Following the analysis of comments received from interested parties, final rules (60 FR 51346, October 2, 1995) putting into effect a number of revisions to the regulations governing administration of the Longshore and Harbor Workers' Compensation Act were implemented during FY 1996. The revisions are designed to improve administration, clarify existing policy, promote cost containment in the payment of medical bills, and reduce overall program administrative costs. The regulatory changes became effective on November 1, 1995.

Special Fund Payment Reports Audits: Update on Results

The audits of Form LS-513, Report of Payments, filed annually by all authorized insurance carriers and self-insured employers, continued during FY 1996 and again proved to be an excellent return on investment. Over six million dollars in Special Fund assessments based on prior years' under-reporting were received during the year, and nearly $21 million over a two-year period. Due in large part to this effective audit program, the Special Fund assessment for 1996 actually decreased compared to 1995 rather than the usual increase in recent years.

ADP Systems Redesign and Conversion

In FY 1996, DLHWC continued its activities related to updating both the Special Fund and Longshore Case Management (LCMS) systems. The redesign and conversion of the Special Fund Benefit Payment and Assessment systems from C-ISAM to INFORMIX (compatible with the ESA platform), including creation of an on-line accounting system and history file, was completed and migration to the Windows™ environment continued with the use of Delphi, a graphic user interface (GUI) visual tool. The GUI permits the design of screens and the importation of the database for editing with a minimal amount of coding.

Upon completion of the Special Fund effort, development and redesign of the next generation of application software for the LCMS will commence with incorporation of enhancements similar to those applied to the Special Fund system. The LCMS redesign will create an interactive/relational database capability that will facilitate jurisdictional case file transfers, district office restructuring, and other streamlining initiatives being undertaken by the Longshore program.

Management of the Special Fund

The Special Fund under the Longshore Act has been established in the Treasury of the United States pursuant to section 44 of the Act and is administered by the national office of DLHWC.

Proceeds of the fund are used for payments under section 10(h) of the Act for annual adjustments in compensation for permanent total disability or death which occurred prior to the effective date of the 1972 amendments, under section 8(f) for second injury claims, under section 18(b) for cases involving employer insolvency, under sections 39(c) and 8(g) for providing rehabilitation assistance to persons covered under the Act, and under section 7(e) to pay the cost of medical examinations.

The Special Fund is financed through fines and penalties levied under the Act; payment by employers of $5,000 for each death case when it is determined that there are no survivors eligible for the benefits; interest payments on Fund investments; and payment of annual assessments by authorized insurance carriers and self-insurers. Fines, penalties, and death benefit levies constitute a small portion of the total amount paid into the Special Fund each year. The largest single source of money for the fund is the annual assessment.

Under section 44(c)(2) of the Act, the expenses of the fund are estimated at the beginning of each CY and each carrier and self-insurer makes prorated payments into the fund. Payments are baaed on a comparison of the total compensation payments each made on risks covered by the Act and the total of such payments made by all carriers and self-insurers under the Act in the prior year, and a comparison of payments under section 8(f) attributable to the carrier/self-insurer and the total of such payments during the preceding CY. There is a separate fund under the District of Columbia Workmen's Compensation Act which is also administered by OWCP. Payments to and from this fund apply only to the DCCA.

The LHWCA Fund paid $118.3 million in benefits in FY 1996, of which $106.5 million went for second injury claims. FY 1996 expenditures of the DCCA Special Fund totaled $11.9 million, of which $10.3 million went for second injury cases.

Litigation

The following summarizes some of the more significant decisions issued during FY 1996 involving provisions of the LHWCA and its extensions.

Jurisdiction. The Fourth Circuit, affirming a decision of the Benefits Review Board, held that an injury sustained at a container repair facility located eight-tenths of a mile from a ship terminal, did not occur in a covered situs. ***Sidwell v. Express Container Services***, 71 F.3d 1134 (4th Cir. 1995), ***Reh. Denied*** January 31, 1996, ***cert. denied*** June 24, 1996. The majority concluded that "the LHWCA requires that covered situses actually 'adjoin' navigable waters, not . . . that they merely be in 'the general geographic proximity' of the waterfront''. ***Accord Parker v. Director, OWCP (Farrell Lines, Inc.),*** 75 F.3d 929 (4th Cir. 1996), ***cert. denied*** October 7, 1996 (container-repair facility located approximately five miles from former location within terminal that is neither contiguous with nor touches navigable waters, does not satisfy maritime situs requirement for LHWCA coverage).

Rizzi v. Underwater Construction Corp ., 84 F.3d 199 (6th Cir. 1996), ***cert. denied*** October 15, 1996, held that a reservoir or tank located underneath a factory and used in paper making process was not a navigable waterway, and thus, commercial diver who suffered a stroke while diving in reservoir was not entitled to LHWCA benefits.

The Ninth Circuit held that a temporary laborer hired to rebuild a vessel's main engine and to repair crack in fuel tank was not a Jones Act seaman, but rather a land-based employee covered by the LHWCA. ***Heise v. Fishing Co. of Alaska, Inc***., 79 F.3d 903 (9th Cir. 1996). Since Heise was hired to provide repair services to the vessel, the court concluded that he was precluded by **§ 5(b)** from bringing a negligence action against the vessel.

In another case, ***Hall v. Equitable Shipyard, Inc.,*** 670 So.2d 543 (La.App. 4 Cir. 1996), the court held that a worker injured while sandblasting vessel in a shipyard could not sue the shipyard in tort since he was a borrowed employee of the shipyard and, therefore, the LHWCA provided his exclusive remedy. ***Hall v. Equitable Shipyard, Inc.,*** 670 So.2d 543 (La.App.4 Cir. 1996).

At issue in ***Total Marine Services, Inc. v. Director, Workers' Comp.*** (Arabie), 87 F.3d 774 (5th Cir. 1996), was whether a "borrowing employer" may be held liable under the LHWCA for paying compensation to the injured borrowed employee. The Fifth Circuit answered this question in the affirmative and also concluded that where the formal employer had paid those benefits, it was entitled to reimbursement from the borrowing employer.

State and federal courts continue to be called upon to resolve issues concerning the appropriate law to apply. In ***Kerr v. Smith Petroleum Co***., 909 F.Supp. 421 (E.D.La. 1995), the court held that worker's acceptance of LHWCA benefits does not preclude application of Louisiana statutory employer defense to tort action filed by the worker injured on offshore oil platform within Louisiana waters. And in ***Wells v. Industrial Com'n,*** 214 Ill.Dec. 38, 660 N.E.2d 229 (Ill.App. 1 Dist. 1995), the court held that state commission did not have jurisdiction over claim filed by person injured while working over navigable waters. Such claim, the court held, falls under the exclusive jurisdiction of the LHWCA. Compare ***Allsouth Stevedoring Company v. Wilson***, 220 Ga.App. 205,469 S.E.2d 348 (Ga.App. 1996) (worker not precluded from seeking state benefits even though he sought and obtained LHWCA benefits).

Time Limitations for Filing Claims. The Sixth Circuit, upholding the award of LHWCA benefits in ***Paducah Marine Ways v. Thompson***, 82 F.3d 130 (6th Cir. 1996), held that § 13(a)'s statute of limitation begins to run "only when the claimant is aware or reasonably should be aware that the injury is work-related, and that the injury wilI [permanently] impair the claimant's wage-earning capacity." The fact the claimant missed work, or suffers pain, is not sufficient to establish a permanent loss of wage-earning capacity.

Third-Party Litigation. The Supreme Court agreed to review the Fifth Circuit's decision in ***Ingalls Shipbuilding, Inc. v. Director, OWCP (Yates),*** 65 F.3d 460, ***reh. en bane denied*** 71 F.3d 880 (5th Cir. 1995), Petition for a Writ of Certiorari No. 95-1081 granted May 13, 19%. The Court agreed to decide whether ***Ingalls*** correctly held that (1) a spouse who participates in a third-party settlement prior to the worker's death was not a "person entitled to compensation" within the meaning of § 33(g), and (2) that the Director, OWCP, had standing to participate as a respondent in appeals filed in the courts of appeal.

Modification of Awards. The Supreme Court also agreed to decide whether, and under what circumstances, the LHWCA authorizes a continuing award of nominal benefits to a claimant who may have suffered a long-term loss of wage-earning capacity, but who has no present loss of earning. The Ninth Circuit held that it was appropriate to issue a "de minimus award" where modification was granted based on the claimant's increased earnings, but where claimant remained permanently partially disabled and there is a likelihood of future economic disability. ***Rambo v. Director, OWCP,*** 81 F.3d 840 (9th Cir. 1996); Petition for a Writ of Certiorari No. 96-2272 granted November 27, 19%.

At issue in ***I.T.O. Corporation of Virginia v. Pettus***, 73 F.3d 523 (4th Cir. 1996), ***cert. denied*** October 7, 1996 (S.Ct. No. 96-1676), was whether a letter making a demand for "any and all benefits that may be due" was sufficient to tolI the one year period for seeking modification under LHWCA § 22. The court held that such letter was not sufficient because it did not indicate an actual intent to seek compensation for a particular period.

Overpayment/Collection Issues. The Washington State Supreme Court held that the LHWCA does not preempt state law remedies for the recovery of overpayments resulting from claimant fraud or intentional misconduct. ***Stevedoring Services of America, Inc. v. Eggert,*** 914 P.2d 737 (1996).

Review of Decisions and Orders. Reversing the Benefits Review Board, the Fifth Circuit held that an employer had standing to appeal an OWCP district director's decision granting claimants motions to withdraw claims filed under the LHWCA. ***Ingalls Shipbuilding, Inc. v. Director, OWCP (Boone)***, 102 F.3d 1385 (5th Cir.), ***reh. granted and new opinion issued*** December 19, 1996. On rehearing Circuit Judge Jolly wrote: "In short, upon Ingalls's request for a hearing, the District Director was obligated by the LHWCA to transfer Boone's claim to the OALJ, and the failure to transfer the claim denied Ingalls a procedural right to which it was entitled."

The Third Circuit held in ***Kreschollek v. Southern Stevedoring Company,*** 78 F.3d 868 (3d Cir. 1996), that the district court could assume jurisdiction over a constitutional challenge to procedures followed under § 14(h), whereby employer terminated voluntary benefit payments without affording the claimant a pretermination due process hearing.

Special Fund Issues. A civil action entitled ***Reich v. Century Oiljield Services, Inc.,*** CA No. 96-0927 L-O (W.D.La.), was instituted to compel the employer to pay $11,000.00 which had been assessed as civil penalties under LHWCA § 30, as made applicable by the Outer Continental Shelf Lands Act, for failure to report seven injuries. The suit, which was pending as of the end of FY 1996, also seeks to enjoin the employer from refusing to file required reports in the future.

LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

Number of Employees (FTE Staffing Used)	114
Administrative Budget	$ 9.0 Million
Lost-Time Injuries Reported	27,748
Total Compensation Paid	$628.0 Million*
Wage Loss and Survivor Benefits	$480.2 Million*
Medical Benefits	$147.8 Million*
Sources of Compensation Paid	
Insurance companies	$238.5 Million*
Self-Insured Employers	$257.9 Million*
LHWCA Special Fund	$118.3 Million
DCCA Special Fund	$ 11.9 Million
DOL Appropriation	$ 3.4 Million

*Figures are for CY 1995. Note: Total compensation paid does not equal the sum of the sources of compensation due to the different time periods (CY v. FY) by which the various data are reported.

MEDICAL AND VOCATIONAL REHABILITATION PROGRAMS

Returning Injured Employees to Work

The OWCP medical and vocational rehabilitation program was instrumental in returning over 5,800 injured workers to employment, using the services of registered nurses and rehabilitation counselors in the private sector, under the direction of staff nurses and vocational rehabilitation specialists in DFEC and Longshore district offices. Private sector case management nurses with an occupational or workers' compensation background provided case management services, enhanced communication among physicians, employers and injured workers, and made work-site assessments. Private sector rehabilitation counselors provided the full range of vocational services.

A key to this achievement was the increased emphasis on Quality Case Management procedures in the FEC program. Several district offices created specialized units devoted to early disability management. The FEC program's Assisted Reemployment project, in which new employers are subsidized for providing work for injured workers, was integrated into the regular rehabilitation program. A certification drive was conducted to train and certify 3,000 or more counselors and nurses to serve OWCP injured workers.

Nearly 22,000 injured Federal and Longshore workers received some nurse or vocational rehabilitation services during FY 1996. Services included nurse intervention and medical coordination, counseling, testing and vocational evaluation, rehabilitation planning, training and placement services. Nurses returned 4,623 FECA cases to work and vocational rehabilitation counselors placed 842 Federal and 357 Longshore workers. Costa for vocational rehabilitation services and maintenance allowances were $12.7 million for FECA and $4.1 million for Longshore, while FECA nurse services were $13 million.

Certification Workshops

Like other workers' compensation programs, OWCP refers workers who need return-to-work services to professionals in the private sector. To ensure a high quality of services, the uniform application of OWCP standards, and a fair and equitable distribution of work, rehabilitation counselors and case management nurses are selected through a formal competitive certification process. Nurses and counselors whose credentials and experience qualify them to be selected attend training sessions designed to familiarize them with the Federal Employees' Compensation and Longshore programs and OWCP procedures. For this process, new classroom training emphasizing more efficient service delivery was developed for both groups. Workshops for nurses and for rehabilitation counselors were held in all FEC and Longshore offices in 1995 and 1996.

Nurse Case Management by Telephone

After a test of the process in two offices, FEC moved to implement nurse case management by telephone for all its district offices. Nurses working by telephone are frequently able to accomplish medical management and an early

return to work more quickly and with less cost than a nurse located in the field who received the case by mail and visits the claimant, agency, and doctor. Visiting the district office periodically, these local nurses can receive assignments more quickly and consult more efficiently with the claims examiner as needed to move the case forward. The case is transferred to a nurse located in the claimant's area of residence for personal contact if it is not resolved within a few weeks.

Early Intervention and Case Management

More than 80 percent of FECA cases in which disability extends beyond an initial compensation payment are referred for nurse services, either by telephone or personal visit. The assigned nurse contacts the injured worker, the worker's physician, and the employer to determine the worker's treatment, prognosis, and potential for return to light or full duty. In most cases, nurses are expected to help the worker get back to work in 120-180 days. When the worker is back at work, the nurse follows his or her progress for a period of 60 days. In some cases, the worker will progress from part-time to full-time work under the oversight of the nurse.

If the agency is not able to re-employ the worker, the nurse obtains a statement of work capacity from the attending physician, or may recommend a second opinion evaluation. From that point, the case is transferred for vocational services, which may include searching for a more complex accommodation by the previous employer, vocational training, or a search for placement in the private sector.

With more comprehensive use of nurse services, and attention to these time periods, the FEC nurse program helped the office resolve 73 percent of disability cases within one year of the date that disability began. Several offices began to meet the second goal, that of resolving 90 percent within two years.

Vocational Planning Timeliness

Each injured worker referred for vocational services under the Longshore or FEC programs is first assessed for return to work with the previous employer. About 61 percent of FECA and 38 percent of Longshore returns to work are with the previous employer, where the worker is in a familiar environment, retains other employment benefits, and has skills and knowledge that are valued. If the employer cannot re-employ the worker, an individualized vocational plan is fashioned jointly by the worker and the counselor. The plan describes the job goal that is consistent with the workers' skills, physical condition, and interests; the services and expenditures planned to meet the goal; and the steps that the worker and counselor commit to in order to achieve a placement.

In FY 1995, OWCP established a provisional goal of 180 days for reaching a plan from the date the case is opened for services. For FY 1996, the goal was made permanent. Nationally, seven district offices were meeting the goal in the fourth quarter of FY 1996, and national performance was at nearly 80 percent.

Putting an approved plan with stated job goals in place promptly serves the employer, by reducing costs and communicating the goal of rehabilitation; and the injured worker, by keeping the worker motivated and providing a target to work toward.

Assisted Reemployment Project

Beginning in FY 1992, Congressional appropriation language for the FEC program authorized OWCP to use the Employees' Compensation Fund to subsidize a portion of the salary paid to a reemployed injured worker by a

new private or public employer. The subsidy requires no additional government funds, since the amount paid to reimburse the employer replaces money which would otherwise have been paid in wage loss compensation to the injured workers.

FEC concluded four years of experience with the new program in FY 1995, during which 216 workers found employment through the program, 34 percent of the 641 who had participated to that point. Another 110 workers elected to retire, found work without a subsidy or were otherwise determined to have a wage-earning capacity, all as a result of the availability of the subsidy to promote employment prospects; thus a total of 51 percent of workers were impacted by the program. Savings in wage loss compensation, net of reimbursements to employers and vocational service costs paid to counselors, were $3,010,947 through FY 1995.

To increase the effectiveness of the Assisted Reemployment program, and to expand the universe of persons who might benefit from its efforts, OWCP authorized its rehabilitation specialists during FY 1996 to offer prospective employers the opportuuity to receive up to 75 percent of wages paid for the first six months of employment. Under the streamlined version of the program, the rehabilitation specialist can immediately calculate and authorize the payment of a short-term subsidy whenever it would likely result in a job offer being made. (See OWCP Bulletin No. 96-01 dated June 12, 1996.) The more elaborate three-year subsidy remains available where needed to secure job offers in the more difficult cases. About 80 persons were reemployed during FY 1996 using some form of salary incentive.

The program is most beneficial for workers who are difficult to place because of severe or multiple disabilities, a difficult local job market, or long absence from any workplace. For example, an injured worker who was legally blind from non-work-related causes found a job after six years on the rolls, with the help of clerical training and six months of placement subsidy provided by OWCP.

Automated Support for DFEC Offices

The Rehabilitation Tracking System was expanded to permit FEC's staff nurses to assign cases to field nurses and track their progress. The system permits the user to rotate assignments among the field nurses available in a particular geographic region, tracks the time spent on individual cases, and keeps a count of returns to work accomplished by the nurse program. The staff nurse can also use the system to make notes and set reminders for future action.

PDS Software Update/Database Installation in All DFEC and Selected DCMWC Offices

The Physician's Directory Service (PDS), a software program designed to support the scheduling of physicians within OWCP for second opinion and referee examinations, was updated in FY 1996 to increase the number of physicians and the number of medical specialties included in the system. The expanded national database totals approximately 90,000 board-certified physicians, to which the district office may make additions as appropriate. The additional medical specialties include vascular, thoracic, hand surgery, and physical medicine. The program allows users to equitably distribute referrals among physicians, find a specialist in a given zip code area, and annotate physician records with useful information such as willingness to perform evaluations and telephone and fax numbers.